



**SUPREME COURT, U. S.**

**JUL 2 1973**

**MICHAEL DORAK, JR., CLERK**

**IN THE**  
**Supreme Court of the United States**

**OCTOBER TERM, 1972**

**72-1019**

**NO. A-534**

**HELEN STEIN GAUDET, ADMINISTRATRIX  
OF THE ESTATE OF AWTREY C. GAUDET, SR.,**

**Appellees**

**VS.**

**SEA-LAND SERVICES, INC.,**

**Appellant**

**ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

**BRIEF FOR THE APPELLANT**

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STANDARD - 1940

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IN THE  
SUPREME COURT OF THE UNITED STATES

October Term, 1972

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NO. A-534

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HELEN STEIN GAUDET, ADMINISTRATRIX  
OF THE ESTATE OF AWTREY C. GAUDET, SR.,

Appellees

VS.

SEA-LAND SERVICES, INC.,

Appellant

---

ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

BRIEF FOR THE APPELLANT

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OPINIONS BELOW

The United States District Court for the Eastern District of Louisiana, Heebe, J., on October 28, 1971 dismissed the plaintiff's claim on the grounds of res judicata and for failure to state a claim upon which relief can be granted. No opinion was rendered from

the United States District Court.

The United States Court of Appeals for the Fifth Circuit, Clark, J., on August 3, 1972, reversed and remanded the judgment of the United States District Court for the Eastern District of Louisiana. The opinion is reported at 463 F. 2d 1331. Sea-Land's petition for rehearing to the United States Court of Appeals for the Fifth Circuit was denied on August 24, 1972 and reported at \_\_\_\_\_ F. 2d \_\_\_\_\_.

On May 7, 1973 the United States Supreme Court granted Sea-Land's petition for writ of certiorari.

#### JURISDICTION

The jurisdiction of this Court is invoked pursuant to Title 28, Section 1254 (1) United States Code.

#### QUESTIONS PRESENTED

(1) Does recovery during the lifetime of a decedent under General Maritime Law for injuries preclude the survivors of decedent from instituting further claims for pecuniary loss resulting from the death of decedent?

(2) Do the survivors have a separate cause of action for pecuniary loss for death under General Maritime Law when the deceased, before his death has reduced his claim for pecuniary loss to judgment?

(3) Has the traditional refusal to award damages for loss of love and affection, society, companionship and loss of consortium under General Maritime Law, the Jones Act and the Death on the High Seas Act been changed

by the Supreme Court in their decision in MORAGNE VS STATES MARINE LINES, 398 U. S. 375, 90 S. Ct. 1772 (1970)?

(4) Is the uniformity intended by MORAGNE VS STATES MARINE LINES in fact destroyed by allowing damages for non pecuniary losses whereas the Jones Act and the Death on the High Seas Act have not traditionally allowed such recovery?

(5) Is not the defendant deprived of his property without due process of law when the survivors of an injured party are allowed to present a new claim for pecuniary loss despite the fact that during his lifetime the decedent reduced his claim for pecuniary loss to a final judgment from a court of competent jurisdiction?

(6) Since the award to decedent before his death included pecuniary loss and anticipated all losses resulting from the accident, are not his survivors then restricted to recovery for non pecuniary damages (i.e., loss of love and affection, society, companionship and loss of consortium) which damages have never been allowed under the Jones Act, Death on the High Seas Act or General Maritime Law?

#### STATEMENT OF THE CASE

The facts necessary to place in their setting the questions now raised can be briefly stated:

On October 29, 1966 Awtrey C. Gaudet, Sr. was injured on board the S/S CLAIBORNE, a vessel in navigable waters within the territorial limits of the State of Louisiana. After injury, suit was instituted by Awtrey C. Gaudet, Sr. in the United States District

Court, Eastern District of Louisiana. (A. 1). This first case culminated in a jury verdict for Mr. Gaudet, Sr. with an award of \$175,000.00 to be reduced by 20% for contributory negligence. (A. 2).

Ten days after the jury award, Mr. Gaudet Sr. died and thereafter his widow, Helen Stein Gaudet, was substituted in this first case to defend post-trial motion and to answer the appeal.

In the appeal of the original suit Mrs. Gaudet did not amend her answer to the defendant's appeal or request additional payment for financial loss due to her husband's death, and in effect acknowledged that she had recovered for the financial loss incurred. On June 24, 1970 Mrs. Gaudet was paid the sum of \$131,000.00 which represents payment for severe financial loss by any reasonable standard.

Subsequently, this second suit was filed in the United States District Court, Eastern District of Louisiana by the widow of the deceased, alleging financial loss resulting from her husband's death, which she alleged was a result of the original accident of October 1966. (A. 3).

The defendant, Sea-Land Services, Inc., moved to dismiss the widow's claim for financial loss on the grounds of res judicata and for failure to state a claim upon which relief can be granted.

On October 29, 1971 after oral argument and consideration of supporting memorandums, the United States District Court granted the defendant's motion to dismiss. (A. 4).

The United States Court of Appeals for the Fifth Circuit, on August 3, 1972, reversed and remanded the case to the District Court and indicated that the deceased's recovery for his personal injuries and financial loss prior to his death did not bar Mrs. Gaudet's wrongful death action to recover for her financial loss. (A. 5).

The Court of Appeals acknowledged, in footnote 1 of their opinion, the possibility of double recovery but did not go forward to distinguish pecuniary from non-pecuniary losses and the recoverability by Mrs. Gaudet of non-pecuniary losses.

On August 24, 1972 the United States Court of Appeals for the Fifth Circuit denied the defendant's Petition for Rehearing. (A. 6). No opinion was rendered in connection with the denial of a rehearing.

On May 7, 1973 the Supreme Court of the United States granted Sea-Land's petition for writ of certiorari.

### ARGUMENT

#### I

The United States Court of Appeals for the Fifth Circuit has created a conflict between recovery under General Maritime Law, the Jones Act and Death on the High Seas Act by allowing recovery for loss of love and affection, society, companionship and loss of consortium under the General Maritime Law in death cases whereas it has never been allowed under cases arising under the Jones Act or the Death on the High Seas Act.

Only one cause of action arose at the

time of Awtrey Gaudet's accident on October 29, 1966. Two rights of action arose at that time; first, the right of Gaudet to prosecute his claim for personal injuries and resulting financial loss and, second, the right of Gaudet's survivors to prosecute the claim in the event Gaudet failed to prosecute it during his lifetime. The law allows only one right of action to be exercised, and because it was exercised by Gaudet during his lifetime, then no right of action was inherited by his survivors. Mr. Gaudet pursued his right of action to judgment during his lifetime. His widow defended the appeal successfully and the judgment was paid to her.

This second suit by Mrs. Gaudet alleges severe financial loss. It is submitted that the only elements of damages that Mrs. Gaudet has not been specifically compensated for is loss of love and affection, society, companionship and loss of consortium. Mr. Gaudet and his heirs have already recovered for all pecuniary losses as well as those non-pecuniary losses of Mr. Gaudet such as pain and suffering in the first suit.

Now, Mrs. Gaudet is attempting to recover for her non-pecuniary loss, that being loss of love and affection, society, companionship and loss of consortium. The District Court said No to this claim. The Court of Appeals for the Fifth Circuit, by reversing the lower court, said Yes to Mrs. Gaudet's claim. This decision by the Fifth Circuit has created a serious conflict between the General Maritime Law as formulated by the Fifth Circuit under the instructions and suggestions of the Supreme Court in Moragne on the one hand and the Jones Act and the Death on the High Seas Act on the other.



Under the Jones Act and the Death on the High Seas Act recovery is not allowed for survivor's grief and similar non-pecuniary losses. Igneri v. Cie de Transports Oceaniques, 323 F. 2d 257 (2nd Cir. 1963); Middleton v. Luckenbach S.S. Co., 70 F. 2d 326 (2nd Cir. 1934). Moreover, under the General Maritime Law most courts have uniformly held that damages for loss of love and affection, society, companionship and loss of consortium are not recoverable.

See Simpson v. Knutsen, 444 F. 2d 523 (9th Cir. 1971); Green v. Ross, 338 F. Supp. 356 (S.D. Fla. 1972); Dennis v. Central Gulf Steamship Corp., 453 F. 2d 137, 140 (5th Cir. 1972); Smith v. Olsen and Ugelstad, 324 F. Supp. 578 (E. D. Mich. 1971); Mugin v. Calmar Steamship Corporation, 342 F. Supp. 479 (D. Md. 1972); and Mascuilli v. United States, 343 F. Supp. 439 (E. D. Pa. 1972).

The recent Louisiana case of Strickland vs. Nutt, 264 So. 2d 317 (1st Cir. 1972) is consistent with this view in denying recovery for non financial loss under General Maritime Law.

The Fifth Circuit, in reversing the ruling of the District Court, has in effect changed the law and now will allow recovery for non-pecuniary losses to the survivors under the General Maritime Law, whereas this recovery is not allowed under the Jones Act or Death on the High Seas Act. It is submitted that the Fifth Circuit decision should be reversed by the Supreme Court in favor of Sea-Land so that damages for loss of love and affection, society, companionship and loss of consortium are not recoverable under the General Maritime Law.



The Fifth Circuit has created a conflict with the Third Circuit case of Roberts vs. Union Carbide, 415 F. 2d 474 (1969).

In the case of Roberts vs. Union Carbide, 415 F. 2d 474 (3rd Cir. 1969), plaintiff obtained judgment for Two Hundred and Ten Thousand (\$210,000.00) Dollars for personal injuries. Five years after the accident decedent died and his survivors brought suit against the same defendant alleging that the prior accident was the cause of death. In affirming the trial court's dismissal of the matter, the Third Circuit stated:

"The plaintiff's cause of action is barred and extinguished by the decedent's having obtained recovery during his lifetime."

The Third Circuit observed that this view is consistent with that of nearly all states having similar statutes and also referred to the annotation in 39 ALR 579 (1925).

The Fifth Circuit in their opinion (Appendix 5) in the face of Mellon vs. Goodyear, 277 U. S. 335, 48 S. Ct. 541 (1928), Flynn vs. New York, N. H. & H. R. Co., 283 U. S. 53, 51 S. Ct. 357 (1931) and Walrod vs. Southern Pacific, 447 F. 2d 930 (9th Cir. 1971) ruled to the contrary. The Supreme Court in Moragne suggested that cases in other areas of law should be employed to resolve questions raised but not answered by Moragne (398 U. S. at 391 and 392). However, the Fifth Circuit has refused to follow clearly established rules in similar fields of law. The aforementioned cases held that a decedent's recovery of damages for injuries which subsequently result in

his death is a bar to an action by his personal representative for wrongful death. The Fifth Circuit in the Gaudet case has reached a different conclusion and has found that the recovery during decedent's lifetime is not a bar to his survivor's suit for additional damages. This conflict should be resolved by the United States Supreme Court by reversing the decision of the Fifth Circuit Court of Appeals so that harmony and uniformity will prevail among the Circuits and so that the rights of litigants will be more clearly defined.

### III

The United States Court of Appeals for the Fifth Circuit has misunderstood the intent of the United States Supreme Court in the case of Moragne vs. States Marine Lines, 398 U. S. 375 (1970) and has in effect undermined the finality of recoveries by settlement or judgment for personal injuries and opened the door for survivors to come back into court years later after the death of the decedent requesting additional damages for financial loss.

Before the Moragne decision there was no Florida remedy for Moragne's widow and the Supreme Court, seeing the injustice and failure of the General Maritime Law to provide a remedy, reversed the harsh rule of The Harrisburg, 119 U. S. 199, and gave the widow a cause and right of action to recover for the financial loss resulting from her husband's death. In the Gaudet case, however, Mr. Gaudet had filed suit and taken his case to judgment before his death. The Fifth Circuit is treating the Gaudet case as if no judgment had in fact been obtained and as if Gaudet had not in fact taken any steps to preserve his rights during his lifetime. In the closing sentence of the opinion the Fifth Circuit states:

"We hold that such an action (for wrongful death) is not one that can be sued out, sold out, compromised or lost by the deceased's actions or inaction before it ever comes into being."

The Court also states that Mr. Gaudet had a cause of action immediately before his death. The Fifth Circuit, it is submitted, is mistaken in this statement for the cause of action for his injuries had been reduced to a judgment which judgment had become a property right and which was inherited by the survivors following his death.

We submit that the case of Mellon vs. Goodyear, 277 U. S. 335 (1928) enunciates principles of law which are applicable here. In the Gaudet decision the Fifth Circuit quoted from the Mellon case at page 344:

"By the overwhelming weight of judicial authority where a statute of the nature of Lloyd Campbell's Act in effect gives a right to recover damages for the benefit of dependents, the remedy depends upon the existence in the decedent at the time of his death of a right of action to recover for such injury." (Emphasis added).

However, the Fifth Circuit failed to quote the next sentence from the decision, which continues the thought and makes a closer application to Gaudet:

"A settlement by the wrongdoer with the injured person, in the absence of fraud or mistake, precludes any remedy by the personal representative based upon the same wrongful

act." (Emphasis added). Mellon vs. Goodyear, 277 U. S. at 344.

Therefore, there was no longer any remedy at the time of decedent's death or thereafter or this right had been extinguished.

See also the case of Flynn vs. New York, N. H. & H. R. Co., 283 U. S. 53 (1931) where decedent was injured in 1923, died in 1928, and his executor brought a wrongful death action in 1929. Mr. Justice Holmes, speaking for the Court said:

"Obviously Flynn's right of action was barred, but it is argued that the right on behalf of the widow and children is distinct; that their cause of action could not arise until Flynn's death, and that therefore the two years did not begin to run until September 1, 1928. But the argument comes too late. It is established that the present right, although not strictly representative, is derivative and dependent upon the continuance of a right in the injured employee at the time of his death. On this ground an effective release by the employee makes it impossible for his administrator to recover. The running of the two years from the time when his cause of action accrued extinguishes it as effectively as a release. Engel v. Davenport, 271 U. S. 33, 38, 46 S. Ct. 410, 70 L. Ed. 813, and the same consequence follows \* \* \*" (Emphasis added) 283 U. S. at 56, 51 S. Ct. at 358.

The Honorable Judge Alvin B. Rubin's

comments at the motion for new trial following the death of the decedent are most appropriate here, as they reflect the well established rule that after a final judgment, neither the plaintiff can come back for more nor can the defendant request a reduction due to facts occurring subsequent to the judgment.

"Now I know and am about to say with respect to damages that we judge all things as of the date of the trial, we can't reopen damages we all know, the Jurisprudence is voluminous for post trial events. The plaintiff gets Ten Thousand Dollars because everybody thinks his injury is minor and then he goes to have it operated on and it proves fatal, he dies. We can't come back and have a new day in Court.

"When you die, the widow comes to Court and goes out the day after she gets the award and marries a rich man who had been courting her all along; these are historic problems and the jury says, and I don't think we can reopen with respect to damages for what happens afterward either way." (Transcript p. 408).

See also the case of Schlavick vs. Manhattan Brewing Company, 103 F. Supp. 744 (ND Ill.) (1952). The Court stated in Schlavick as follows:

"A decedent's recovery of damages for injuries, which resulted in his death, is a bar to an action by his personal representative for wrongful death."

"An action by a personal representative for the wrongful death of his decedent will be barred if such decedent in his lifetime made a valid settlement for the injuries which resulted in his death."

## IV

The protective application of the doctrine of Res Judicata has been undermined by the United States Court of Appeals for the Fifth Circuit.

The Court should take note of the fact that the language in the suit brought by the widow was identical to the language in the suit brought by plaintiff before his death. Both pleadings claim that "severe financial loss" was caused by the accident and the death of decedent.

In the action filed by the widow, no request is made for damages for non-pecuniary loss such as loss of love and affection, companionship and loss of consortium. The only allegation of damage is that the widow suffered "severe financial loss".

Claimant died ten days following the jury award of \$175,000.00. Plaintiff did not file for a new trial requesting that the question of damages be reopened so that damages arising out of the death of decedent could be included in the judgment. Counsel for decedent's survivors was well aware of the prohibition against such a request. On appeal of the first case, counsel for claimant did not request enlargement of the judgment due to the death of the decedent nor were any allegations made at any time that the award was inadequate or should be amended. Rather on June 24, 1970,



she accepted the sum of \$131,000.00 in full satisfaction of the judgment and then instituted the claim for wrongful death upon which this appeal is based.

Two conditions must be met in order for the exception of Res Judicata to apply:

1. "The judgment or decree of a Court of competent jurisdiction on the merits precludes the parties and their privies to the litigation and constitutes a bar to a new action or suit involving the same cause of action either before the same or any other tribunal, and

2. Any right, fact or matter in issue, and directly adjudicated on or necessarily involved in the determination of an action before a competent Court in which a judgment or decree is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim or demand, purpose or subject matter of the two suits is the same." Vol. 50 Corpus Juris Secundum, Sec. 592, p. 11. (Emphasis supplied.)

We submit that the second suit by the widow meets all of the essential elements necessary to invoke the doctrine of Res Judicata.

The widow of the deceased cannot recover again for loss of future earnings which the deceased would have earned had he lived, as his recovery in the first case included the loss of earnings, past and future. Allowance

of such recovery would compensate the widow twice for the identical elements of damage. The allegations of the pleadings are identical and again the widow is requesting payment for "severe financial loss". The widow is seeking the proverbial pound of flesh, which the Court has no power to grant. It is submitted that the Fifth Circuit's decision, if allowed to stand, will deprive the appellants of their property without due process of law in violation of the Fourteenth Amendment to the Constitution. The law fashioned by the Fifth Circuit in their decision, it is respectfully suggested, is not the law of the land, is not the General Maritime Law, is not consistent with the Jones Act or the Death on the High Seas Act and should be so held by the Supreme Court by reversing the Court of Appeals, and by reinstating the District Court's ruling rejecting the claim of Helen Stein Gaudet.

We do not dispute the right of Helen Stein Gaudet to file suit for damages resulting from the accident to Mr. Gaudet, had her husband never filed suit in his own behalf. However, those "potential rights of his survivors were extinguished when he brought the first suit and subsequently obtained a jury award. The judgment obtained by Mr. Gaudet before his death was inherited as a property right by his widow. She has no right to enlarge it.

#### CONCLUSION

For the reasons aforesaid, it is respectfully prayed that the decision of the Fifth Circuit Court of Appeals be reversed and that the ruling of the United States District Court for the Eastern District of Louisiana



be reinstated rejecting the claim of Helen Stein Gaudet.

Respectfully submitted,

McCLENDON, GREENLAND & DENKMAN

By:

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Telephone: 837-2144  
Attorneys for defendant,  
Sea-Land Services, Inc.

PROOF OF SERVICE

I, Richard L. Greenland, attorney for defendant and a member of the bar of the Supreme Court of the United States, hereby certify that on this day, I have served copies of the foregoing brief on the merits and appendix on:

GEORGE W. REESE, Attorney  
627 National Bank of Commerce  
New Orleans, Louisiana 70112

by mailing a copy thereof, postage prepaid addressed to their respective offices, this 29th day of June, 1973.

RICHARD L. GREENLAND

APPENDIX

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IN THE SUPREME COURT OF THE UNITED STATES

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OCTOBER TERM, 1972

NO. A-534

---

HELEN STEIN GAUDET, ADMINISTRATRIX  
OF THE ESTATE OF AWTRY C. GAUDET, SR.,

Appellees

V.

SEA-LAND SERVICES, INC.

Appellant

---

ON WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

---

PETITION FOR CERTIORARI FILED JANUARY 22, 1973  
CERTIORARI GRANTED MAY 7, 1973

## INDEX

### APPENDIX

Complaint of Awtrey C. Gaudet vs.  
Sea-Land Services, Inc. in the  
United States District Court for  
the Eastern District of Louisiana,  
New Orleans Division, No. 67-1276,  
Section "C"

Appendix No. 1

Judgment in favor of Awtrey C.  
Gaudet and against Sea-Land  
Services, Inc. in the sum of  
\$140,000.00 and costs

Appendix No. 2

Complaint of Helen Stein Gaudet,  
Administratrix of the Estate of  
Awtrey C. Gaudet, Sr. vs. Sea-Land  
Services, Inc. in the United States  
District Court for the Eastern  
District of Louisiana, New Orleans  
Division, No. 70-3035, Section "B"

Appendix No. 3

Minute Entry of the United States  
District Court, Eastern District  
of Louisiana, dismissing the  
Complaint of Helen Stein Gaudet  
in Case No. 70-3035

Appendix No. 4

Opinion of the United States Court  
of Appeals for the Fifth Circuit

Appendix No. 5

Rehearing denied by the United  
States Court of Appeals for the  
Fifth Circuit

Appendix No. 6

## APPENDIX NO. 1

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA  
NEW ORLEANS DIVISION

AWTREY C. GAUDET

CIVIL ACTION

AGAINST

IN ADMIRALTY

SEA-LAND SERVICES, INC.

NO. 67-1276

SECTION G

## COMPLAINT

## I

That at all times hereinafter mentioned, the plaintiff was and still is, a citizen of the State of Louisiana, and residing at 4722 Good Drive, New Orleans, Louisiana; defendant is a corporation organized under the laws of and domiciled in the State of New Jersey.

## II

At all times mentioned herein, the defendant was, and still is, the owner and operator of the S/S CLAIBORNE, which at the time of the occurrence herein was a merchant ship, said vessel can now be found or during the pendency of this action will be within the Port of New Orleans and within the territorial jurisdiction of the United States.

## III

That the plaintiff was employed as a longshoreman aboard said vessel, which was docked in the Mississippi River on October 29, 1966 on the navigable waters of the

United States in the City of New Orleans,  
State of Louisiana.

## IV

That at the time and place mentioned above, plaintiff was going about his duties as a longshoreman when he slipped, coming from a tier of cargo, injuring his back.

## V

That the accident and resulting injury was caused by the unseaworthiness of the S/S CLAIBORNE in that it was not provided with ladders to go from tier to deck and the deck was greasy.

That prior to these injuries, plaintiff was a strong, able-bodied man gainfully employed and capable of earning in excess of One Hundred (\$100.00) Dollars per week. As a result of these injuries, plaintiff has been unable to pursue his occupation with the same degree of proficiency and he has sustained permanent disability, has suffered physical agony and will continue to do so and has suffered loss of wages and will continue to do so.

WHEREFORE, plaintiff demands judgment against Sea-Land Services, Inc. in the full sum of Two Hundred and Fifty Thousand (\$250,000.00) Dollars.

Please Serve  
Defendant:  
Sea-Land Services,  
Inc., through  
Secretary of State

---

REESE & ABADIE  
PETER J. ABADIE, JR.  
ATTORNEYS FOR PLAINTIFF  
627 N.B.C. BLDG. 523-1953  
NEW ORLEANS 70112

## APPENDIX NO. 2

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
NEW ORLEANS DIVISION

AWTREY C. GAUDET                      CIVIL ACTION  
versus                                      NO. 67-1276  
SEA-LAND SERVICES, INC.              SECTION "C"

Filed: June 25, 4:11 p.m., 1970

J U D G M E N T

Considering the answers returned by the jury herein, to the interrogatories propounded to it by the Court on June 23, 1970, and considering the direction of the Court as to the entry of judgment;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein, in favor of plaintiff, Awtrey C. Gaudet, and against defendant, Sea-Land Services, Inc., in the sum of \$140,000.00 and costs.

Dated at New Orleans, Louisiana, this 25th day of June, 1970.

Benjamin W. Reisch  
BENJAMIN W. REISCH, Clerk

By /s/ Nelson B. Jones  
Nelson B. Jones, Chief  
Deputy Clerk

Approved as  
to form:

/s/ Alvin B. Rubin  
UNITED STATES DISTRICT JUDGE

George W. Reese, Esq.  
Andrew T. Martinez, Esq.  
Stuart A. McClendon, Esq.

## APPENDIX NO. 3

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA  
NEW ORLEANS DIVISIONHELEN STEIN GAUDET, ADMINISTRATRIX  
OF THE ESTATE OF AWTREY C.  
GAUDET, SR.CIVIL ACTION  
70-3035  
SECTION B

AGAINST

SEA-LAND SERVICES, INC.

COMPLAINT

Plaintiff is domiciled in the State of Louisiana and is the administratrix of the estate of Awtrey C. Gaudet, Sr., and resides at 4722 Good Drive, New Orleans, Louisiana; defendant is a corporation organized under the laws of and domiciled in the State of New Jersey. The matter in controversy exceeds \$1,000.00 exclusive of interest and costs.

## II.

At all times mentioned herein, the defendant was, and still is, the owner and operator of the S/S Claiborne, which at the time of the occurrence herein was a merchant ship, said vessel can now be found or during the pendency of this action will be within the Port of New Orleans and within the territorial jurisdiction of the United States

## III.

That Awtrey C. Gaudet, Sr. was employed as a longshoreman aboard said vessel, which

was docked in the Mississippi River on October 29, 1966 on the navigable waters of the United States in the City of New Orleans, State of Louisiana.

IV.

That at the time and place mentioned above, Awtrey C. Gaudet, Sr. was going about his duties as a longshoreman when he slipped, coming from a tier of cargo, injuring his back.

V.

That the accident and resulting injury was caused by the unseaworthiness of the S/S Claiborne in that it was not provided with ladders to go from tier to deck and the deck was greasy.

VI.

That plaintiff was dependant for support on the said Awtrey C. Gaudet, Sr. and that as a result of the injuries and treatment resulting therefrom described in Paragraph IV, the said Awtrey C. Gaudet died on June 29, 1970.

VII.

That as a result of the death of Awtrey C. Gaudet, Sr. plaintiff suffered severe financial loss.

VIII.

That the unseaworthiness of the said S/S CLAIBORNE as described in Paragraph V of this Complaint has already been decided



by a judgment of this Court and is now  
res judicata.

WHEREFORE, plaintiff demands judgment  
against Sea-Land Services, Inc. in the full  
sum of TWO HUNDRED and FIFTH THOUSAND  
(\$250,000.00) DOLLARS.

---

REESE & ABADIE  
GEORGE W. REESE  
Attorney for Plaintiff  
627 NBC Building  
523-1953  
New Orleans 70112

PLEASE SERVE DEFENDANT:

Sea-Land Services, Inc.  
Through Secretary of State

APPENDIX NO. 4

The Minute Entry of the United States District Court, Eastern District of Louisiana, dismissing the Complaint of Helen Stein Gaudet in Case No. 70-3035 has been included in Appellant's Petition for Writ of Certiorari as Appendix "A".

APPENDIX NO. 5

The Opinion of the United States Court of Appeals for the Fifth Circuit has been included in Appellant's Petition for Writ of Certiorari as Appendix "B".

APPENDIX NO. 6

The Order Denying Rehearing by the United States Court of Appeals for the Fifth Circuit has been included in Appellant's Petition for Writ of Certiorari as Appendix "C".